

## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Tuesday, October 15, 2019 4:53 PM  
**To:** Mark Holtzman; Mike Montanye; Patina Oxendine; Shari S. Groccia  
**Cc:** Donald Phillips; Rhonda Wilkerson; April Alligood  
**Subject:** Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)  
**Attachments:** N.C.G.S. 132-1.4A.PDF; NCGS 132-1 4A - Request for Disclosure of Recording.pdf; AOC-CV-270 (04.2017).pdf

FYI and please note Mr. Romary's email below.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



**From:** Donald Phillips  
**Sent:** Tuesday, October 15, 2019 4:50 PM  
**To:** Peter Romary <peter.romary@qverity.com>  
**Cc:** Donald Phillips <DKPhillips@greenvillenc.gov>  
**Subject:** Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

**PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING**

**Name of Requestor:** Peter Romary, Esq.  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal  
**Date of Request:** 10/15/2019  
**Date of Incident:** 09/25/2019  
**GPD Officer(s):** None  
**GPD File No.:** None

Mr. Romary:

I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

**Overview of the law regarding law enforcement recordings:** Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either **view** (seek "**disclosure**") or obtain a **copy** (seek "**release**") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

**If you want to VIEW the GPD recording(s):** I have attached the *GPD Request for Disclosure of Recording Form*. You will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye's contact information:

Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
Email: [mmontanye@greenvillenc.gov](mailto:mmontanye@greenvillenc.gov)  
Telephone: (252) 329-4835

**If you want to RECEIVE A COPY of the GPD recording(s):** For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

**Please note that I am out of town at a CLE, but will be back in the office on Thursday.** Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)





*Find yourself in good company®*

**From:** Peter Romary <[peter.romary@qverity.com](mailto:peter.romary@qverity.com)>  
**Sent:** Tuesday, October 15, 2019 12:38 PM  
**To:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>  
**Subject:** Surveillance Video - CONFIDENTIAL REQUEST

Good Afternoon, Donald.

My name is Peter Romary, I am an attorney living most of the time in Hillsborough and also Greenville (I will be there tomorrow). I was formerly a PBA // FoP Panel Attorney and was friends with Bill Little -- I practiced law with Galen Braddy for a number of years.

I have been retained by some private parties, including a couple of members of the ECU Board of Trustees and UNC Board of Governors - this is in response to an ever changing story from Dan Gerlach and an allegation of a "set up" by him and some who support him.

The "set up" (which has been outlined online by some) states that a "Cabal" of Judges, Lawyers, BoT, BoG and former political opponents paid 2 off duty police officers to lure Gerlach from Sup Dogs to Club 519. There, so the theory goes, the officers had a "prostitute" they had picked up previously for sale of drugs, waiting to "put Gerlach in compromising positions" so that he could be photographed.

A strange story indeed and one of several changing stories told -- also very unlikely as Gerlach said the trip to Sup Dogs was a last minute / spur of the moment decision. Withholding charges in return for pay and to set someone up also sounds felonious to me. As such, my clients -- no BoT members have been named just "BoT members" along with Judges seem to be accused in this, what appears to me to be a, "fantasy".

That said, I would like to look at and view the video surveillance on the basis that my clients may be alleged at some time to be on them. I have also spoken to a Judge, friend of 25 years, and they are quite annoyed about this. So, I am writing, requesting access to or copies of GPD surveillance camera footage.

I have down the times that some witnesses have said things occurred -- Gerlach arrived at Sup Dogs between 2100-2130 on the night of Sept 25th. He left at approximately 2230-2250.

So, cameras pointed at or picking up Sup Dogs for the earlier time (as well as parking lot footage from 2100-2130). Then cameras between Sup Dogs and Club 519, including any cameras picking up along the way and showing door of 519 between 2230-2300.

Finally, cameras showing the parking lot behind and in front of Sup Dogs from 2345-0300 (25th-26th) -- I understand his latest story has him going to 2 other clubs after Club 519.

My clients asked for this after some BoT members were asked to produce their cellphones by a private law firm asked to look into this matter (so, somehow this story is being investigated).

We have unnamed Judges, lawyers, BoT, BoG and un-named political rivals from years gone by accused in this story -- Gerlach simply states he "may have been set up" which suggests that off duty officers lured him to a nightclub (not sure why the words "No thanks" were not used).

My request is not for body camera footage and is not so that anything can be displayed online. If these allegations catch hold there is a likelihood that my clients (who for now wish to preserve anonymity because of national press interest) may have to show they were NOT there. Further, there is a public interest in showing that NO police officers were involved in any way, NO judges were involved in any way and that NO conspiracy existed -- I would have hoped that Mr. Gerlach's ever changing story and the fact that the first pictures posted online were videos taken by students, would have ended this.

I know Mike Montanye, whose department these video files are kept in. I will be in Greenville tomorrow and, with your permission pursuant to the General Statutes permitting release of videos (albeit body camera) I would very much like to get the videos and clear this up. In essence allegations have been made suggesting people are on these videos -- no allegation has yet been made that BoT or BoG members were present BUT it would not take much for someone to suggest they were, alleging that they wanted to see "a plan in action" -- we contend that this is nonsense BUT, rather than relying on videos that may be purged, I would rather have said video and review it to refute any such allegation that comes along.

Further, I would like, pro bono, as I did many times before, to assist and protect officers from baseless allegations made by people whom, I contend, are lying to cover up drunken foolishness that may or may not have involved a sex act and / or assault on a female.

Thank you for your time and assistance -- as I say, I will be down in Greenville tomorrow and, with your permission, could arrange to get these from Mike.

Very best wishes,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

**§ 132-1.4A. Law enforcement agency recordings.**

(a) Definitions. – The following definitions apply in this section:

- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
- (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.
- (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
- (7) Release. – To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Factors for Consideration. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be

heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to

this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.

(i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section. (2016-88, s. 1.)



Physical Address:  
500 South Greene Street  
Greenville, North Carolina 27834

Mailing Address:  
Post Office Box 7207  
Greenville, North Carolina 27835-7207



For Internal Use Only:	
Report No.:	

Telephone: (252) 329-4333  
Facsimile: (252) 329-4792

Mark R. Holtzman, Chief of Police  
[mholtzman@greenvillenc.gov](mailto:mholtzman@greenvillenc.gov)

## GREENVILLE POLICE DEPARTMENT

### Request for Disclosure of Recording Pursuant to N.C.G.S. § 132-1.4A

#### PLEASE NOTE:

Pursuant to N.C.G.S. § 132-1.4A(a)(4), "disclosure" means to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Greenville Police Department, the custodial law enforcement agency. The term "disclosure" does not include the release ("to provide a copy") of a recording.

#### Person Requesting Disclosure of Recording—Requestor's Information

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email: \_\_\_\_\_

What is the date, approximate time of the activity captured in the recording? Date: \_\_\_\_\_ Approximate Time: \_\_\_\_\_ ☐ a.m. ☐ p.m.

Report, Citation, or Arrest Number (if known): \_\_\_\_\_

Describe any other information identifying the activity captured in the recording or otherwise describing the event:  
\_\_\_\_\_  
\_\_\_\_\_

Type of Recording (check all that apply): ☐ Body-worn camera ☐ Dashboard camera ☐ Other Recording

#### PLEASE NOTE:

Recordings are not public records as defined by N.C.G.S. § 132-1 and are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, N.C.G.S. § 160A-168, or N.C.G.S. § 153A-98. Recordings do not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. N.C.G.S. §§ 132-1.4A(a)(6) and (b).

As the Requestor, I am (please check all that apply):

- ☐ (1) A person whose image or voice is in the recording.
- ☐ (2) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person whose image or voice is in the recording, and the adult person has consented to the disclosure.

*(A copy of the legal documentation establishing your authority to make this request and written consent must be included with this request.)*

**Provide below the name, address, and telephone number of the adult person whose image or voice is in the recording:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ (3) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.  
*(A copy of the legal documentation establishing your authority to make this request must be included with this request.)*

Provide below the name, address, and age of the minor or adult person under lawful guardianship whose image or voice is in the recording:

- ☐ (4) A personal representative (☐ the personal representative of the estate of the deceased person; ☐ the deceased person's surviving spouse, ☐ the deceased person's parent, ☐ the deceased person's adult child; ☐ the deceased person's attorney; or ☐ the parent or ☐ the guardian of a surviving minor child) of a deceased person whose image or voice is in the recording.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and date of death of the deceased person whose image or voice is in the recording:

- ☐ (5) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person who is incapacitated and unable to provide consent to disclosure.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and current location of the adult person whose image or voice is in the recording and who is alleged to be incapacitated and unable to provide consent (please also specify why you contend the adult person is incapacitated and unable to provide consent to disclosure):

PLEASE NOTE:

Upon receipt of the written request for disclosure, as promptly as possible, the Greenville Police Department must either disclose the portion of the recording relevant to the person's request or notify the requestor of the Greenville Police Department's decision not to disclose the recording to the requestor. N.C.G.S. § 132-1.4A(d). When disclosing the recording, the Greenville Police Department shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to N.C.G.S. § 132-1.4A(c) shall not record or copy the recording. If the Greenville Police Department denies disclosure pursuant to subsection N.C.G.S. § 132-1.4A(d), or has failed to provide disclosure more than three (3) business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure.

**I have read and understand this document.**

Signature: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**FOR INTERNAL USE ONLY**

Received By: \_\_\_\_\_ Date of Receipt: \_\_\_\_\_

Time of Receipt: \_\_\_\_\_ ☐ a.m. ☐ p.m.

NOTES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STATE OF NORTH CAROLINA**

File No. \_\_\_\_\_

In The General Court Of Justice  
Superior Court Division

\_\_\_\_ County

**IN THE MATTER OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

Name Of Petitioner \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Email Address \_\_\_\_\_

**PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure  
(No Filing Fee Applies)☐ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to \_\_\_\_\_,  
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:

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(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE  
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:

Date \_\_\_\_\_

Petitioner's Signature \_\_\_\_\_

## Donald Phillips

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**From:** Donald Phillips  
**Sent:** Tuesday, October 15, 2019 4:54 PM  
**To:** Ann E. Wall; Emanuel D. McGirt  
**Cc:** Rhonda Wilkerson; Donald Phillips  
**Subject:** FW: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)  
**Attachments:** N.C.G.S. 132-1.4A.PDF; NCGS 132-1 4A - Request for Disclosure of Recording.pdf; AOC-CV-270 (04.2017).pdf

FYI (please note Mr. Romary's email below).

### Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

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**Sent:** Tuesday, October 15, 2019 4:50 PM  
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**Subject:** Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

### PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING

<b>Name of Requestor:</b>	<b>Peter Romary, Esq.</b> <b>Partner and General Counsel, QVerity</b> <b>Managing Partner, QVerity Legal</b>
<b>Date of Request:</b>	<b>10/15/2019</b>
<b>Date of Incident:</b>	<b>09/25/2019</b>
<b>GPD Officer(s):</b>	<b>None</b>
<b>GPD File No.:</b>	<b>None</b>

Mr. Romary:



I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

**Overview of the law regarding law enforcement recordings:** Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either **view** (seek "**disclosure**") or obtain a **copy** (seek "**release**") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

**If you want to VIEW the GPD recording(s):** I have attached the *GPD Request for Disclosure of Recording Form*. You will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye's contact information:

Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
Email: [mmontanye@greenvillenc.gov](mailto:mmontanye@greenvillenc.gov)  
Telephone: (252) 329-4835

**If you want to RECEIVE A COPY of the GPD recording(s):** For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

**Please note that I am out of town at a CLE, but will be back in the office on Thursday.** Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)





*Find yourself in good company®*

**From:** Peter Romary <[peter.romary@qverity.com](mailto:peter.romary@qverity.com)>  
**Sent:** Tuesday, October 15, 2019 12:38 PM  
**To:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>  
**Subject:** Surveillance Video - CONFIDENTIAL REQUEST

Good Afternoon, Donald.

My name is Peter Romary, I am an attorney living most of the time in Hillsborough and also Greenville (I will be there tomorrow). I was formerly a PBA // FoP Panel Attorney and was friends with Bill Little -- I practiced law with Galen Braddy for a number of years.

I have been retained by some private parties, including a couple of members of the ECU Board of Trustees and UNC Board of Governors - this is in response to an ever changing story from Dan Gerlach and an allegation of a "set up" by him and some who support him.

The "set up" (which has been outlined online by some) states that a "Cabal" of Judges, Lawyers, BoT, BoG and former political opponents paid 2 off duty police officers to lure Gerlach from Sup Dogs to Club 519. There, so the theory goes, the officers had a "prostitute" they had picked up previously for sale of drugs, waiting to "put Gerlach in compromising positions" so that he could be photographed.

A strange story indeed and one of several changing stories told -- also very unlikely as Gerlach said the trip to Sup Dogs was a last minute / spur of the moment decision. Withholding charges in return for pay and to set someone up also sounds felonious to me. As such, my clients -- no BoT members have been named just "BoT members" along with Judges seem to be accused in this, what appears to me to be a, "fantasy".

That said, I would like to look at and view the video surveillance on the basis that my clients may be alleged at some time to be on them. I have also spoken to a Judge, friend of 25 years, and they are quite annoyed about this. So, I am writing, requesting access to or copies of GPD surveillance camera footage.

I have down the times that some witnesses have said things occurred -- Gerlach arrived at Sup Dogs between 2100-2130 on the night of Sept 25th. He left at approximately 2230-2250.

So, cameras pointed at or picking up Sup Dogs for the earlier time (as well as parking lot footage from 2100-2130). Then cameras between Sup Dogs and Club 519, including any cameras picking up along the way and showing door of 519 between 2230-2300.

Finally, cameras showing the parking lot behind and in front of Sup Dogs from 2345-0300 (25th-26th) -- I understand his latest story has him going to 2 other clubs after Club 519.

My clients asked for this after some BoT members were asked to produce their cellphones by a private law firm asked to look into this matter (so, somehow this story is being investigated).

We have unnamed Judges, lawyers, BoT, BoG and un-named political rivals from years gone by accused in this story -- Gerlach simply states he "may have been set up" which suggests that off duty officers lured him to a nightclub (not sure why the words "No thanks" were not used).

My request is not for body camera footage and is not so that anything can be displayed online. If these allegations catch hold there is a likelihood that my clients (who for now wish to preserve anonymity because of national press interest) may have to show they were NOT there. Further, there is a public interest in showing that NO police officers were involved in any way, NO judges were involved in any way and that NO conspiracy existed -- I would have hoped that Mr. Gerlach's ever changing story and the fact that the first pictures posted online were videos taken by students, would have ended this.

I know Mike Montanye, whose department these video files are kept in. I will be in Greenville tomorrow and, with your permission pursuant to the General Statutes permitting release of videos (albeit body camera) I would very much like to get the videos and clear this up. In essence allegations have been made suggesting people are on these videos -- no allegation has yet been made that BoT or BoG members were present BUT it would not take much for someone to suggest they were, alleging that they wanted to see "a plan in action" -- we contend that this is nonsense BUT, rather than relying on videos that may be purged, I would rather have said video and review it to refute any such allegation that comes along.

Further, I would like, pro bono, as I did many times before, to assist and protect officers from baseless allegations made by people whom, I contend, are lying to cover up drunken foolishness that may or may not have involved a sex act and / or assault on a female.

Thank you for your time and assistance -- as I say, I will be down in Greenville tomorrow and, with your permission, could arrange to get these from Mike.

Very best wishes,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

**§ 132-1.4A. Law enforcement agency recordings.**

(a) Definitions. – The following definitions apply in this section:

- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
- (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.
- (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
- (7) Release. – To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.



- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Factors for Consideration. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be

heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to

this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.

(i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section. (2016-88, s. 1.)

Physical Address:  
500 South Greene Street  
Greenville, North Carolina 27834

Mailing Address:  
Post Office Box 7207  
Greenville, North Carolina 27835-7207



**For Internal Use Only:**

Report No.:

Telephone: (252) 329-4333  
Facsimile: (252) 329-4792

Mark R. Holtzman, Chief of Police  
[mholtzman@greenvillenc.gov](mailto:mholtzman@greenvillenc.gov)

## GREENVILLE POLICE DEPARTMENT

### Request for Disclosure of Recording Pursuant to N.C.G.S. § 132-1.4A

**PLEASE NOTE:**

Pursuant to N.C.G.S. § 132-1.4A(a)(4), "disclosure" means to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Greenville Police Department, the custodial law enforcement agency. The term "disclosure" does not include the release ("to provide a copy") of a recording.

#### Person Requesting Disclosure of Recording—Requestor's Information

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email: \_\_\_\_\_

What is the date, approximate time of the activity captured in the recording? Date: \_\_\_\_\_ Approximate Time: \_\_\_\_\_ ☐ a.m. ☐ p.m.

Report, Citation, or Arrest Number (if known): \_\_\_\_\_

Describe any other information identifying the activity captured in the recording or otherwise describing the event:  
\_\_\_\_\_  
\_\_\_\_\_

Type of Recording (check all that apply): ☐ Body-worn camera ☐ Dashboard camera ☐ Other Recording

**PLEASE NOTE:**

Recordings are not public records as defined by N.C.G.S. § 132-1 and are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, N.C.G.S. § 160A-168, or N.C.G.S. § 153A-98. Recordings do not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. N.C.G.S. §§ 132-1.4A(a)(6) and (b).

As the Requestor, I am (please check all that apply):

- ☐ (1) A person whose image or voice is in the recording.
- ☐ (2) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person whose image or voice is in the recording, and the adult person has consented to the disclosure.

*(A copy of the legal documentation establishing your authority to make this request and written consent must be included with this request.)*

**Provide below the name, address, and telephone number of the adult person whose image or voice is in the recording:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ (3) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.  
*(A copy of the legal documentation establishing your authority to make this request must be included with this request.)*



Provide below the name, address, and age of the minor or adult person under lawful guardianship whose image or voice is in the recording:

- ☐ (4) A personal representative (☐ the personal representative of the estate of the deceased person; ☐ the deceased person's surviving spouse, ☐ the deceased person's parent, ☐ the deceased person's adult child; ☐ the deceased person's attorney; or ☐ the parent or ☐ the guardian of a surviving minor child) of a deceased person whose image or voice is in the recording.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and date of death of the deceased person whose image or voice is in the recording:

- ☐ (5) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person who is incapacitated and unable to provide consent to disclosure.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and current location of the adult person whose image or voice is in the recording and who is alleged to be incapacitated and unable to provide consent (please also specify why you contend the adult person is incapacitated and unable to provide consent to disclosure):

**PLEASE NOTE:**

Upon receipt of the written request for disclosure, as promptly as possible, the Greenville Police Department must either disclose the portion of the recording relevant to the person's request or notify the requestor of the Greenville Police Department's decision not to disclose the recording to the requestor. N.C.G.S. § 132-1.4A(d). When disclosing the recording, the Greenville Police Department shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to N.C.G.S. § 132-1.4A(c) shall not record or copy the recording. If the Greenville Police Department denies disclosure pursuant to subsection N.C.G.S. § 132-1.4A(d), or has failed to provide disclosure more than three (3) business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure.

**I have read and understand this document.**

Signature: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**FOR INTERNAL USE ONLY**

Received By: \_\_\_\_\_ Date of Receipt: \_\_\_\_\_

Time of Receipt: \_\_\_\_\_ ☐ a.m. ☐ p.m.

NOTES:

**STATE OF NORTH CAROLINA**

File No. \_\_\_\_\_

In The General Court Of Justice  
Superior Court Division

\_\_\_\_ County

**IN THE MATTER OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

Name Of Petitioner \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Email Address \_\_\_\_\_

**PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure  
(No Filing Fee Applies)☐ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to \_\_\_\_\_,  
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:

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(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE  
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:

Date \_\_\_\_\_

Petitioner's Signature \_\_\_\_\_

## Donald Phillips

---

**From:** Peter Romary <peter.romary@qverity.com>  
**Sent:** Tuesday, October 15, 2019 5:28 PM  
**To:** Donald Phillips  
**Subject:** Re: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

Many thanks, Donald.

This is tremendously helpful and very kind of you to get back so fast.

Likely, I will just need to “view” and then, only if necessary, would we seek disclosure.

I will keep you apprised of any and all actions taken at directions of my clients.

In the interim it would be very helpful if any and all recordings from 2100 on the night of the Sept 25th until 0300 on the morning of Sept 26th could be preserved. They would cover:

2100-2300 (9/25) any cameras covering entrance and egress to Sup Dogs.

2215-2300 (9/25) cameras between Sup Dogs and Club 519.

0130-0245 (9/26) Cameras showing ingress and egress to 5th Street Annex Bar.

0200-0300 (9/26) — videos showing 5th Street in front of 212 East 5th Street.

If those could be preserved I would be very grateful. I am also confirming representing (potentially) the Police Benevolent Association and also the Fraternal Order of Police — this is because “off duty cops” have been accused of being involved in this rather fantastic “fairy tale” like story.

Again — I am very grateful for your kind assistance and guidance.

Best wishes,

Peter

Sent from my iPhone

On Oct 15, 2019, at 4:49 PM, Donald Phillips <DKPhillips@greenvillenc.gov> wrote:

### **PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING**

**Name of Requestor:** Peter Romary, Esq.  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

**Date of Request:** 10/15/2019  
**Date of Incident:** 09/25/2019  
**GPD Officer(s):** None  
**GPD File No.:** None

Mr. Romary:

I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

**Overview of the law regarding law enforcement recordings:** Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either **view** (seek "**disclosure**") or obtain a **copy** (seek "**release**") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

**If you want to VIEW the GPD recording(s):** I have attached the *GPD Request for Disclosure of Recording Form*. You will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye's contact information:

Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
Email: [mmontanye@greenvillenc.gov](mailto:mmontanye@greenvillenc.gov)  
Telephone: (252) 329-4835

**If you want to RECEIVE A COPY of the GPD recording(s):** For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

**Please note that I am out of town at a CLE, but will be back in the office on Thursday.** Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald



**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)

<image001.jpg>

**From:** Peter Romary <peter.romary@qverity.com>

**Sent:** Tuesday, October 15, 2019 12:38 PM

**To:** Donald Phillips <DKPhillips@greenvillenc.gov>

**Subject:** Surveillance Video - CONFIDENTIAL REQUEST

Good Afternoon, Donald.

My name is Peter Romary, I am an attorney living most of the time in Hillsborough and also Greenville (I will be there tomorrow). I was formerly a PBA // FoP Panel Attorney and was friends with Bill Little -- I practiced law with Galen Braddy for a number of years.

I have been retained by some private parties, including a couple of members of the ECU Board of Trustees and UNC Board of Governors - this is in response to an ever changing story from Dan Gerlach and an allegation of a "set up" by him and some who support him.

The "set up" (which has been outlined online by some) states that a "Cabal" of Judges, Lawyers, BoT, BoG and former political opponents paid 2 off duty police officers to lure Gerlach from Sup Dogs to Club 519. There, so the theory goes, the officers had a "prostitute" they had picked up previously for sale of drugs, waiting to "put Gerlach in compromising positions" so that he could be photographed.

A strange story indeed and one of several changing stories told -- also very unlikely as Gerlach said the trip to Sup Dogs was a last minute / spur of the moment decision. Withholding charges in return for pay and to set someone up also sounds felonious to me. As such, my clients -- no BoT members have been named just "BoT members" along with Judges seem to be accused in this, what appears to me to be a, "fantasy".

That said, I would like to look at and view the video surveillance on the basis that my clients may be alleged at some time to be on them. I have also spoken to a Judge, friend of 25 years, and they are quite annoyed about this. So, I am writing, requesting access to or copies of GPD surveillance camera footage.

I have down the times that some witnesses have said things occurred -- Gerlach arrived at Sup Dogs between 2100-2130 on the night of Sept 25th. He left at approximately 2230-2250.

So, cameras pointed at or picking up Sup Dogs for the earlier time (as well as parking lot footage from 2100-2130). Then cameras between Sup Dogs and Club 519, including any cameras picking up along the way and showing door of 519 between 2230-2300.

Finally, cameras showing the parking lot behind and in front of Sup Dogs from 2345-0300 (25th-26th) -- I understand his latest story has him going to 2 other clubs after Club 519.

My clients asked for this after some BoT members were asked to produce their cellphones by a private law firm asked to look into this matter (so, somehow this story is being investigated).

We have unnamed Judges, lawyers, BoT, BoG and un-named political rivals from years gone by accused in this story -- Gerlach simply states he "may have been set up" which suggests that off duty officers lured him to a nightclub (not sure why the words "No thanks" were not used).

My request is not for body camera footage and is not so that anything can be displayed online. If these allegations catch hold there is a likelihood that my clients (who for now wish to preserve anonymity because of national press interest) may have to show they were NOT there. Further, there is a public interest in showing that NO police officers were involved in any way, NO judges were involved in any way and that NO conspiracy existed -- I would have hoped that Mr. Gerlach's ever changing story and the fact that the first pictures posted online were videos taken by students, would have ended this.

I know Mike Montanye, whose department these video files are kept in. I will be in Greenville tomorrow and, with your permission pursuant to the General Statutes permitting release of videos (albeit body camera) I would very much like to get the videos and clear this up. In essence allegations have been made suggesting people are on these videos -- no allegation has yet been made that BoT or BoG members were present BUT it would not take much for someone to suggest they were, alleging that they wanted to see "a plan in action" -- we contend that this is nonsense BUT, rather than relying on videos that may be purged, I would rather have said video and review it to refute any such allegation that comes along.

Further, I would like, pro bono, as I did many times before, to assist and protect officers from baseless allegations made by people whom, I contend, are lying to cover up drunken foolishness that may or may not have involved a sex act and / or assault on a female.

Thank you for your time and assistance -- as I say, I will be down in Greenville tomorrow and, with your permission, could arrange to get these from Mike.

Very best wishes,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

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If you have received it by mistake please let us know by reply and then delete it from your system; access, disclosure, copying, distribution or reliance on any of it by anyone else is prohibited.  
If you as intended recipient have received this e-mail incorrectly, please notify the sender (via e-mail) immediately.

<N.C.G.S. 132-1.4A.PDF>

<NCGS 132-1 4A - Request for Disclosure of Recording.pdf>

<AOC-CV-270 (04.2017).pdf>

## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Tuesday, October 15, 2019 5:31 PM  
**To:** Mark Holtzman; Mike Montanye; Patina Oxendine; Shari S. Groccia  
**Cc:** Donald Phillips; Rhonda Wilkerson; April Alligood  
**Subject:** FW: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

FYI

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



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**From:** Peter Romary <peter.romary@qverity.com>  
**Sent:** Tuesday, October 15, 2019 5:28 PM  
**To:** Donald Phillips <DKPhillips@greenvillenc.gov>  
**Subject:** Re: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

Many thanks, Donald.

This is tremendously helpful and very kind of you to get back so fast.

Likely, I will just need to “view” and then, only if necessary, would we seek disclosure.

I will keep you apprised of any and all actions taken at directions of my clients.

In the interim it would be very helpful if any and all recordings from 2100 on the night of the Sept 25th until 0300 on the morning of Sept 26th could be preserved. They would cover:

2100-2300 (9/25) any cameras covering entrance and egress to Sup Dogs.

2215-2300 (9/25) cameras between Sup Dogs and Club 519.

0130-0245 (9/26) Cameras showing ingress and egress to 5th Street Annex Bar.

0200-0300 (9/26) — videos showing 5th Street in front of 212 East 5th Street.

If those could be preserved I would be very grateful. I am also confirming representing (potentially) the Police Benevolent Association and also the Fraternal Order of Police — this is because “off duty cops” have been accused of being involved in this rather fantastic “fairy tale” like story.

Again — I am very grateful for your kind assistance and guidance.

Best wishes,

Peter

Sent from my iPhone

On Oct 15, 2019, at 4:49 PM, Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)> wrote:

**PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING**

<b>Name of Requestor:</b>	<b>Peter Romary, Esq.</b> <b>Partner and General Counsel, QVerity</b> <b>Managing Partner, QVerity Legal</b>
<b>Date of Request:</b>	<b>10/15/2019</b>
<b>Date of Incident:</b>	<b>09/25/2019</b>
<b>GPD Officer(s):</b>	<b>None</b>
<b>GPD File No.:</b>	<b>None</b>

Mr. Romary:

I understand that you are interested in viewing City of Greenville, Greenville Police Department (“GPD”) traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

**Overview of the law regarding law enforcement recordings:** Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either view (seek “**disclosure**”) or obtain a copy (seek “**release**”) of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for “disclosure” of GPD recordings are handled by GPD and the Chief of Police allows or denies “disclosure.” A recording can only be “released” by superior court order and only after the person seeking “release” has first “filed” a Petition for Release in superior court.

**If you want to VIEW the GPD recording(s):** I have attached the GPD *Request for Disclosure of Recording Form*. You will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye’s contact information:

Lieutenant Michael Montanye



Strategic Services  
Greenville Police Department  
Email: [mmontanye@greenvillenc.gov](mailto:mmontanye@greenvillenc.gov)  
Telephone: (252) 329-4835

**If you want to RECEIVE A COPY of the GPD recording(s):** For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

**Please note that I am out of town at a CLE, but will be back in the office on Thursday.** Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)

<image001.jpg>

**From:** Peter Romary <[peter.romary@qverity.com](mailto:peter.romary@qverity.com)>  
**Sent:** Tuesday, October 15, 2019 12:38 PM  
**To:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>  
**Subject:** Surveillance Video - CONFIDENTIAL REQUEST

Good Afternoon, Donald.

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Sup Dogs to Club 519. There, so the theory goes, the officers had a "prostitute" they had picked up previously for sale of drugs, waiting to "put Gerlach in compromising positions" so that he could be photographed.

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Very best wishes,

Peter

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Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

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This e-mail is for the intended recipient only.

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<N.C.G.S. 132-1.4A.PDF>

<NCGS 132-1 4A - Request for Disclosure of Recording.pdf>

<AOC-CV-270 (04.2017).pdf>

## Donald Phillips

---

**From:** Mike Montanye  
**Sent:** Wednesday, October 16, 2019 9:26 AM  
**To:** Donald Phillips  
**Subject:** Video

The times in the text message I received about the downtown incident are spot on. I also have some historical information about who has access to our camera system. Lastly, a request has been submitted to lock down the segments of video that Tina and I have saved. Call when you can and/or let me know if I need to update the Chief on this discovery.

Thank you

Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
252-329-3215 Office  
252-916-3900 Cell

## Donald Phillips

---

**From:** Patina Oxendine  
**Sent:** Wednesday, October 16, 2019 9:26 AM  
**To:** Freddie Wilkins  
**Cc:** Mike Montanye; Donald Phillips  
**Subject:** Milestone Viewing Restriction

**Importance:** High

Freddie,

Below is the list of video files to restrict from viewing

TFC\_GPD\_5thReade\_PTZ\_R2 09/25/2019 9:20 pm- 10:45pm  
UPT\_GPD\_5thReade\_Quad1\_NE\_R6a 09/25/2019 9:20 pm- 9:30pm  
UPT\_GPD\_5thReade\_Quad1\_W\_R6a 09/25/2019 9:20 pm- 9:30pm  
  
UPT\_GPD\_5thCotanche\_Quad5\_N\_R6a 09/25/2019 10:41 pm- 10:43pm  
UPT\_GPD\_5thCotanche\_Quad5\_E\_R6a 09/25/2019 10:41 pm- 10:43pm  
UPT\_GPD\_5thCotanche\_Quad5\_W\_R6a 09/25/2019 10:41 pm- 10:43pm  
  
UPT\_GPD\_5thCotanche\_Quad1\_SE\_R6a 09/25/2019 10:42 pm- 10:46pm  
UPT\_GPD\_5thCotanche\_Quad4\_N\_R6a 09/25/2019 10:42 pm- 10:46pm  
UPT\_GPD\_5thCotanche\_Quad4\_S\_R6a 09/25/2019 10:42 pm- 10:46pm  
  
UPT\_GPD\_5thCotanche\_Quad4\_SW\_R6a 09/26/2019 1:15Am- 1:21Am  
UPT\_GPD\_5thCotanche\_Quad4\_W\_R6a 09/26/2019 1:15Am- 1:21Am  
UPT\_GPD\_5thCotanche\_Quad4\_N\_R6a 09/26/2019 1:15Am- 1:21Am  
UPT\_GPD\_5thCotanche\_Quad4\_S\_R6a 09/26/2019 1:15Am- 1:21Am  
  
UPT\_GPD\_5thCotanche\_Quad1\_S\_R6a 09/26/2019 1:15Am- 1:21Am  
UPT\_GPD\_5thCotanche\_Quad1\_SE\_R6a 09/26/2019 1:15Am- 1:21Am  
  
UPT\_GPD\_5thCotanche\_S\_R2 09/26/2019 1:16Am- 1:56Am  
  
TFC\_GPD\_5thReade\_PTZ\_R2 09/2/2019 2:10 am- 2:13 am  
TFC\_GPD\_5thReade\_W\_R2 09/26/2019 2:10 am- 2:13 am  
UPT\_GPD\_5thReade\_Quad1\_NE\_R6a 09/26/2019 2:10 am- 2:13 am  
UPT\_GPD\_5thReade\_Quad1\_W\_R6a 09/26/2019 2:10 am- 2:13 am

*Patina "Tina" Oxendine*

Police Technology Specialist  
Greenville Police Department  
252-329-4152  
[poxendine@greenvillenc.gov](mailto:poxendine@greenvillenc.gov)  
[www.greenvillenc.gov](http://www.greenvillenc.gov)





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## Donald Phillips

---

**From:** Peter Romary <peter.romary@qverity.com>  
**Sent:** Thursday, October 17, 2019 9:30 AM  
**To:** Donald Phillips  
**Subject:** Tapes

Good Morning, Donald:

I have now been retained by the NC Police Benevolent Association; I am awaiting word from the FoP, but have been a panel attorney for them, like the PBA in the past.

We have difficulty as the online / social media conspiracy theory of a "set up" (and per interviews and Daily Reflector article Dan Gerlach seems to have adopted this narrative) states that "off duty officers" (GPD) put Gerlach in a compromising position and lured him into this.

My clients vehemently deny this -- therefore, the online conspiracy theorists state that my clients were with Gerlach (and hence would be on tape) and my clients deny it. I cannot, without caveat request to view said tapes unless I adopt this conspiracy theory.

On this basis, and because of allegations of criminal conduct of my clients (along with judges, lawyers, BoT and BoG members) I am in a quandary.

May I, therefore, ask for a compromise solution that does not involve me viewing the tapes or having tapes released to me (the 2 scenarios that invoke the statute).

**I would ask if you or the custodian would look at two short parts of the tapes** -- there are only two time points and locations and then confirm to me that no off duty or on duty GPD officers are in the videos.

The first is when Gerlach left Sup Dogs between 2230-2300 on Weds 25th. He was (per witnesses) leading a group and I need confirmation that no off duty officers appear in that video. ***My plan is to handle this quietly, even though unnamed officers have been accused of serious misconduct, and that is going around ECU from what I have heard -- not good in advance of Halloween***

The second is video of Gerlach (can be described as adult male) entering the drivers side of a gold colored Nissan vehicle on the 200 block of East 5th Street between 0155-0220 to confirm that no off duty police or other persons were with him, placed him in vehicle or were visible in vehicle with him.

These are the two major areas where allegations of wrongdoing have and still could arise -- this would negate the need for ME to view the videos (although I understand that others may request it via court order) -- I can then state to my clients that the videos have been viewed and comport with other information we have that no officers (off duty or on) were present at the times stated -- as such, we have no statutory right to view the videos.

This would also negate the need for a trip to Greenville and also for me to go about with a form stating that my clients state they are not there but online / social media and many others state that they were.

An email to just send a short synopsis to is [peter.romary@qverity.com](mailto:peter.romary@qverity.com) -- again, there is no need to name anyone, simply "an individual" or "a male" --eg: "an individual on the 200 block of East 5th Street entered a

Gold colored car (nIssan per witness) through the driver's door at (recite time and date) and no officers were present with him, and none placed him in car. Therefore you have no clients in this video." and same for Sup Dogs.

Based on my research there is no preclusion on this as it does not involve me watching or receiving ANY videos.

Timing is of the essence as my clients have stated they will seek assistance of the House Speaker to subpoena videos as part of the legislative oversight function -- I would ask that all videos be preserved as requests may come or court orders be sought by others (I have no instructions at this time if I can obtain this clarification).

Many thanks,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

## Donald Phillips

---

**From:** Avaya Aura Messaging <avayamsg@AAM.COGNC.NET>  
**Sent:** Thursday, October 17, 2019 10:26 AM  
**To:** Donald Phillips  
**Subject:** Voice Message from 2524138155 / "N CAROLINA CALL"  
**Attachments:** Audio\_Recording\_S1-204751\_001\_compend.wav



## Donald Phillips

---

**From:** Peter Romary <peter.romary@qverity.com>  
**Sent:** Thursday, October 17, 2019 3:02 PM  
**To:** Donald Phillips  
**Subject:** Follow Up

Dear Donald:

I had emailed and called earlier -- since that time I was asked if I have received an email as requested to clear officers (some of whom it is going around social media, are accused of being corrupt and worse).

I have now been retained additionally by the North Carolina Fraternal Order of Police as well as the NC Police Benevolent Association. All we seek right now is confirmation in form requested this morning that no GPD officers (off or on duty) took Mr. Gerlach to Club 519 and further that no police officers placed, assisted or were with him when he got into his car and drove off.

We are seeking to clear the good names of a department of officers who have been traduced -- that is where this would end for us. I know Mike is leaving at 1530 today and will not return until 10/28. So, it appears time for this is running out, unless another officer or you will validate for us.

The NC PBA and NC FOP are merely seeking to protect the good name of officers and a police department from the outrageous allegations of people who are spreading lies; lies that at this time could be dangerous to officers if the public (including some Medical Doctors who believe it) are taken in.

Many thanks,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

## Donald Phillips

---

**From:** Shari S. Groccia  
**Sent:** Thursday, October 17, 2019 4:09 PM  
**To:** Donald Phillips  
**Subject:** RE: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

Call me about this when you get a minute. Thanks

**From:** Donald Phillips  
**Sent:** Tuesday, October 15, 2019 4:52 PM  
**To:** Mark Holtzman <MHoltzman@greenvillenc.gov>; Mike Montanye <MMontanye@GREENVILLENC.GOV>; Patina Oxendine <POxendine@greenvillenc.gov>; Shari S. Groccia <SSGroccia@greenvillenc.gov>  
**Cc:** Donald Phillips <DKPhillips@greenvillenc.gov>  
**Subject:** Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

Voicemail from Attorney Peter Romary.

Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



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**From:** Rhonda Wilkerson <[Rhonda.Wilkerson@AAM.COGNC.NET](mailto:Rhonda.Wilkerson@AAM.COGNC.NET)>  
**Sent:** Tuesday, October 15, 2019 12:11 PM  
**To:** Donald Phillips <[Donald.Phillips@AAM.COGNC.NET](mailto:Donald.Phillips@AAM.COGNC.NET)>  
**Subject:** Voice Message from Rhonda Wilkerson (4426)

## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Thursday, October 17, 2019 4:44 PM  
**To:** Mark Holtzman; Shari S. Groccia; Mike Montanye; Patina Oxendine  
**Cc:** Donald Phillips  
**Subject:** Gerlach Matter--VM from Peter Romary--Voice Message from 2524138155 / "N CAROLINA CALL"  
**Attachments:** Audio\_Recording\_S1-204751\_001\_compand.wav

FYI. Chief, can you call me at your convenience to discuss.

Thank you.  
Donald

**Donald K. Phillips**  
Assistant City Attorney  
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Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
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**From:** Avaya Aura Messaging <avayamsg@AAM.COGNC.NET>  
**Sent:** Thursday, October 17, 2019 10:26 AM  
**To:** Donald Phillips <Donald.Phillips@AAM.COGNC.NET>  
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**Cc:** Donald Phillips  
**Subject:** FW: Follow Up

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Managing Partner, QVerity Legal

## Donald Phillips

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**From:** Shari S. Groccia  
**Sent:** Thursday, October 17, 2019 4:55 PM  
**To:** Donald Phillips; Mark Holtzman; Mike Montanye; Patina Oxendine  
**Subject:** RE: Follow Up

Clear WHAT names? No names have been mentioned. PBA and FOB would do nothing with that.

**From:** Donald Phillips  
**Sent:** Thursday, October 17, 2019 4:53 PM  
**To:** Mark Holtzman <MHoltzman@greenvillenc.gov>; Shari S. Groccia <SSGroccia@greenvillenc.gov>; Mike Montanye <MMontanye@GREENVILLENC.GOV>; Patina Oxendine <POxendine@greenvillenc.gov>  
**Cc:** Donald Phillips <DKPhillips@greenvillenc.gov>  
**Subject:** FW: Follow Up

FYI

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**From:** Peter Romary <[peter.romary@qverity.com](mailto:peter.romary@qverity.com)>  
**Sent:** Thursday, October 17, 2019 3:02 PM  
**To:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>  
**Subject:** Follow Up

Dear Donald:

I had emailed and called earlier -- since that time I was asked if I have received an email as requested to clear officers (some of whom it is going around social media, are accused of being corrupt and worse).

I have now been retained additionally by the North Carolina Fraternal Order of Police as well as the NC Police Benevolent Association. All we seek right now is confirmation in form requested this morning that no GPD officers (off or on duty) took Mr. Gerlach to Club 519 and further that no police officers placed, assisted or were with him when he got into his car and drove off.

We are seeking to clear the good names of a department of officers who have been traduced -- that is where this

would end for us. I know Mike is leaving at 1530 today and will not return until 10/28. So, it appears time for this is running out, unless another officer or you will validate for us.

The NC PBA and NC FOP are merely seeking to protect the good name of officers and a police department from the outrageous allegations of people who are spreading lies; lies that at this time could be dangerous to officers if the public (including some Medical Doctors who believe it) are taken in.

Many thanks,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

## Donald Phillips

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**From:** Peter Romary <peter.romary@qverity.com>  
**Sent:** Friday, October 18, 2019 6:44 AM  
**To:** Donald Phillips  
**Subject:** Good Morning and Quick Follow Up

Good Morning, Donald:

Great to meet you via phone yesterday -- so glad the GPD is in such solid hands!

I spoke with my clients last night and (per permission) wanted to quickly follow up with you.

As you know, state personnel matters, inquiries are private and so sending video to BoG should keep it in due bounds. We had spoken yesterday about my possibly joining in a petition with the UNC system // BoG and I wondered if you had been contacted by them for tapes // petition to release tapes and (if so) if you could let me know who represents whom in that -- that way I can ask my clients if they would like to join in? If not we will do this alone.

I am assured they want this for themselves as unions (and may share with UNC BoG // ECU BoT) and only use it in public in any forum where officers have been explicitly or implicitly accused of wrongdoing -- I have the dates and times based on witnesses and can send them to you (night of Wed 25th into early hours of Thurs 26th Sept) -- of course we fully understand your need to review and ensure there is nothing of a "salacious nature" that would cause harm to any 3rd party.

They are absolutely willing to see if we can get a consent order as, again, the goal is to actually prove a negative (that no officers were there) when anything happened and hence, can only do so with tapes.

You have my categorical assurance that NO officer has stated to anyone that they were downtown that night and I do not believe that any officer would engage in a conspiracy.

Many thanks for letting me know if anyone else has made a request so I could seek permission to reach out and do this in one go -- otherwise we will just submit it to BoG for what I read from the law, is a confidential discussion they would have. That way, as I say, we circumscribe and keep within due bounds!

Very best wishes,

Peter

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Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal



## Donald Phillips

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**From:** Peter Romary <peter.romary@qverity.com>  
**Sent:** Sunday, October 20, 2019 10:02 PM  
**To:** Donald Phillips  
**Subject:** Petition and Consent Order

Good evening, Donald:

Judge Foster is on the ECU BoV and as such cannot sign a consent order -- however, Judge JC Cole is in town this week and I am informed that if request is narrow (so no PD need information and chance to object) and as long as we can arrange an agreement between us then the signing of a consent order in Chambers and the pick up of the videos (plus preservation of others could be effectuated this week.

The reason for the alacrity is that there is a rumor that a decision will be made this week and, if Gerlach is reinstated, it will be because his story about a "set up" (which as we discussed begins with "corrupt cops") is being accepted.

As you know, Halloween is almost upon us and the State and National PBA and FoP want to be sure that headlines or belief in this "conspiracy theory" does not impact police nor behavior towards police.

The tapes my clients are interested in getting copies of are:

- a) the ones showing Gerlach leaving Sup Dogs with 3-4 people in his group -- important that we have that one - NO police should be in that per witnesses as none were around
- b) less so, and if any cops in then we will be fine just watching that one.
- c) video of him leaving 519 in an Uber or Lyft with a female and male of college age -- again, if any cops in that then would be happy to just view.
- d) video of him coming up to his car on 5th street, video showing him entering his car and then driving off -- again, per witnesses NO police should be in that as no police were around in the area.

The order would be brief in nature and I'll chat with you about it and petition, but would state that videos are for delivery and use of PBA and FoP and that my clients will also provide copies to the BoG for their oversight of the investigation (the governing board who are separate and distinct from General Administration -- GA were the ones who, I understand authorized and are directing the investigation -- the videos will not be released to the media by my clients except if police officers are explicitly or implicitly accused or it is inferred that officers were involved in a "set up" or "conspiracy" involving Dan Gerlach and then they may be used to defend the police or police officers in the same forum or forums in which such allegations shall have been made.

As a former police officer I hope you agree this is fair as officers cannot speak out for themselves. NO officers were involved in any of this and this is what has caused the extreme upset.

I am taking my wife for minor surgery in the AM but plan to contact Faris and let him know what is going on, then I would come down (having worked on wording of petition and consent order with you) file order, meet you, go and see Judge Cole to get it signed and then pick up the videos and drop them off with my clients --- doing do before any melee could occur with Halloween or any editorial could be written alleging that off duty

police and a "dark cabal" set this up -- we are (my clients and I) very concerned about the "pick on GPD" narrative that could end in violence against cops here or elsewhere.

Many thanks, my friend -- apologies for the rushing of this BUT with Judges, police, BoT and BoG members plus "former political adversaries" being blanket accused by this man and his friends, we need to move (on our side) as fast as we can.

Very best wishes,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal